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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

PUBLIC SERVICE COMM

1993 OCT 13 P 3

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TIME WARNER TELECOM,

Complainant,

vs.

Docket No. \_\_\_\_\_

WISCONSIN BELL, INC.  
d/b/a AMERITECH WISCONSIN,

Respondent.

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COMPLAINT

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Time Warner Communications of Milwaukee, L.P. ("Time Warner Telecom"), by its attorneys, and pursuant to Chapter 196 of the Wisconsin Statutes and section PSC 2.11, Wis. Admin. Code, files this Complaint against Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin for the violation of statutory, regulatory, and contractual requirements concerning the provisioning of Long-Term Number Portability ("LNP").

**PARTIES**

1. Complainant, Time Warner Telecom is a Delaware limited partnership duly authorized by the Public Service Commission of Wisconsin

("Commission") as an alternative telecommunications utility to provide intrastate telecommunications services in Wisconsin, including competitive local exchange services.

2. Respondent, Wisconsin Bell, Inc., is a Wisconsin corporation authorized by the Commission to provide intrastate telecommunications services in Wisconsin, including local exchange services. Wisconsin Bell, Inc., is a subsidiary of Ameritech and does business in Wisconsin under the name Ameritech Wisconsin ("Ameritech"). Ameritech is an Incumbent Local Exchange Carrier ("ILEC") and Bell Operating Company as defined by the federal Telecommunications Act of 1996. Ameritech is a "public utility" and a "telecommunications utility" as those terms are defined in § 196.01, Stats.

### ***Number Portability Obligations***

3. The Telecommunications Act of 1996 (the "Act")<sup>1</sup> "establishes 'a pro-competitive, de-regulatory national policy framework' that is intended to 'promote competition and reduce regulation . . . to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies.' The statute imposes obligations and responsibilities on telecommunications carriers,

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et. Seq.).

particularly incumbent local exchange carriers, that are designed to open monopoly telecommunications markets to competitive entry and to promote competition in markets that already are open to new competitors.” (FCC First Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, ¶ 2 (June 27, 1996) (“First Report and Order”)).

4. Number portability is one of the obligations Congress imposed on all local exchange carriers (“LECs”), both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned. “Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange market place.” (First Report and Order, ¶ 2). “The ability to change service providers is only meaningful if a customer can retain his or her local telephone number.” (*Id.*).

5. The Act defines “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” (47 U.S.C. § 153(30)) (emphasis added). The Act directs that each LEC has the duty to provide, “to the extent technically feasible, number portability in

accordance with the requirements prescribed by the [Federal Communications Commission ("FCC")]. (47 U.S.C. § 251(b)(2)).

-6. In its First Report and Order, and pursuant to the statutory requirement in Section 251 to provide number portability, the FCC required all LECs to begin to implement a long-term service provider portability solution that would meet certain performance criteria in the 100 largest Metropolitan Statistical Areas ("MSAs") no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998. (First Report and Order, ¶ 3). Specifically, the FCC required:

Deployment in one MSA in each of the seven [Bell Operating Company ("BOC")] regions by the end of fourth quarter 1997, 16 additional MSAs by the end of first quarter 1998, 22 additional MSAs by the end of second quarter 1998, 25 additional MSAs by the end of third quarter 1998, and 30 additional MSAs by the end of fourth quarter 1998.

(First Report and Order, ¶ 77).

Pursuant to the FCC's implementation schedule, implementation of long-term number portability was to be completed in Milwaukee, Wisconsin by June 30, 1998. (First Report and Order, Appendix F).

7. Pending implementation of long-term service provider portability, the FCC required LECs to provide interim number portability ("INP") measures, such as Remote Call Forwarding ("RCF") and Direct Inward Dialing

(“DID”), as soon as reasonably possible after receipt of a specific request from another carrier. (First Report and Order, ¶¶ 6, 114).

8. The FCC concluded that upon the date on which long-term portability must be implemented according to its deployment schedule, “BOCs must provide long-term number portability and will be subject to an enforcement action under Section 211(d)(6) if they fail to do so.” (First Report and Order, ¶ 115).

9. Ameritech has failed to provide LNP in a timely and proper manner in violation of federal and state law and the Interconnection Agreement between Time Warner Telecom and Ameritech. Specifically, Ameritech has failed to interface with Time Warner Telecom in such a manner as to ensure that orders for porting numbers and performing LNP cut overs are done in a timely, efficient, and safe manner, without impairing the quality, reliability, or convenience of the customer’s telecommunications services. End users who change service providers from Ameritech to Time Warner Telecom have suffered outages and delays in receiving service, impairing the quality and reliability of the service they receive, and resulting in inconvenience and safety concerns, all due to Ameritech’s methods and procedures for processing orders for porting numbers and effectuating cut overs.

***Commission Authority And Jurisdiction  
To Resolve This Complaint***

10. The Commission has authority under Wisconsin Statutes to resolve this Complaint. Under § 196.02(1), Stats., the Commission “has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.” Since state law requires that telecommunications services be rendered in a just and reasonable manner, the Commission must be able to evaluate whether Ameritech’s provisioning of LNP is just and reasonable and in conformity with state and federal law.

11. The Commission has authority to resolve this Complaint under § 196.03(1), Stats., which provides that “a public utility shall furnish reasonably adequate service and facilities.”

12. The Commission also is authorized to hear and resolve this Complaint under § 196.219, Stats. Section 196.219(3) provides that a telecommunications utility may not do any of the following with respect to regulated services:

(a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for hearing, that additional interconnection is in the public interest and is consistent with the factors under s. 196.03(6).

(b) Upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection.

(c) Impair the speed, quality or efficiency of services, products or facilities offered to a consumer under a tariff, contract or price list.

(d) Unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

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(em) Refuse to provide a service, product or facility to a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(f) Refuse to provide basic local exchange service, business access line and usage service within a local calling area and access service on an unbundled basis to the same extent that the federal communications commission requires the telecommunications utility to unbundle the same services provided under its jurisdiction. The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03(6). The public service commission may order unbundling by a small telecommunications utility.

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(h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03(6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications



utility's own or an affiliate's retail department that sells to consumers.

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7. (L) Fail to provide, or to terminate, any telecommunications service as necessary to comply with the minimum standards of service established by the commission with respect to technical service quality, deposits, disconnection, billing and collection of amounts owed for services provided or to be provided.

Ameritech's failure to timely and properly provision LNP implicates all of these subsections. Section 196.219(4) provides that the Commission, upon its own motion or a complaint filed by a consumer,<sup>2</sup> shall have jurisdiction to take administrative action or to commence civil actions against telecommunications utilities to enforce § 196.219. (§ 196.219(a), Stats.). The Commission also may institute in any court of competent jurisdiction a proceeding against a telecommunications utility for injunctive relief to compel compliance with § 196.219, to compel the accounting and refund of any moneys collected in violation of § 196.219, or for any other relief permitted under Chapter 196. (§ 196.219(b), Stats.).

13. The Commission is authorized to hear and resolve this Complaint under §§ 196.26 and 196.28(1), Stats. Section 199.26 authorizes the Commission to hold hearings on and resolve complaints that "any rate . . . charge

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<sup>2</sup> "Consumer" is defined to include a telecommunications provider that uses the services, products or facilities provided by a telecommunications utility. (§ 196.219(1), Stats.).

... act or practice relating to the provision of ... telecommunications service is unreasonable, inadequate, unjustly discriminatory or cannot be obtained.”

(§ 196.26(1)). Under § 196.28, the Commission summarily may investigate matters in which it believes “any rate or charge is unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made ...” Since Ameritech’s provisioning of LNP is unreasonable, inadequate, unjustly discriminatory, and unlawful, the Commission’s authority extends to Time Warner Telecom’s claims.

14. Pursuant to § PSC 165.051, Wis. Admin. Code, “[i]n the event a customer’s service is interrupted otherwise than by the negligence or willful act of the customer and it remains out of order for a substantial period of time after being reported or found to be out of order, appropriate adjustments or refunds shall be made to the customer.” Pursuant to this section, Ameritech is required to indemnify Time Warner Telecom in an amount equal to all customer adjustments or refunds made by Time Warner Telecom to its customers for Ameritech’s failure to properly provision LNP.

15. The Commission also has clear and unquestioned authority to hear and resolve this Complaint under the provisions of the Interconnection Agreement. On July 12, 1996, Time Warner Telecom and Ameritech entered into

an Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Interconnection Agreement"). The Interconnection Agreement was approved by the Commission at its August 27, 1996 open meeting and by its Letter Order dated August 27, 1996.

16. Among other things, the Interconnection Agreement provides that "the Parties shall migrate from RCF or DID to Permanent Number Portability as soon as practically possible but no later than December 31, 1998, without interruption of service (to the degree possible) to their respective customers." (Interconnection Agreement, Section 15.2.5). This provision is consistent with the Act and the First Report and Order.

17. The Interconnection Agreement provides for Commission review and a determination of disputes in situations where the parties are unable to resolve the issues themselves. Article XXXIV of the Interconnection Agreement applies to "any dispute arising under this Agreement or related agreements the Parties may have in connection with this Agreement." Time Warner Telecom and Ameritech have had numerous discussions and meetings regarding Ameritech's number portability provisioning problems. Most recently, on September 30, 1998, Time Warner Telecom executives and Ameritech executives met in Chicago, Illinois to discuss the LNP problems at length. However, the problems have not been resolved and continue to threaten competition.

18. In the event no resolution is possible, a party may attempt to resolve any dispute "according to the rules, guidelines and regulations of the Commission."<sup>3</sup> In addition, section 35.5 of the Interconnection Agreement provides that if the parties are unable to resolve a dispute pursuant to Article XXXIV, "then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity." Since Time Warner Telecom and Ameritech agreed to this process, and since the Commission approved this contractual provision, Time Warner Telecom properly may bring this dispute to the Commission for review and resolution.

19. The Commission also has authority to resolve this Complaint under the Telecommunications Act of 1996. The Eighth Circuit Court of Appeals recently confirmed state regulators' authority to review disputes under an Interconnection Agreement when it determined that "state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252."<sup>3</sup> The Court stated that state commission enforcement power "extends to ensuring that parties comply with the regulations that the FCC is specifically authorized to issue under the Act."<sup>4</sup>

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<sup>3</sup> *Iowa Utilities Board v. FCC*, No. 96-3321, slip op. at 122 (8th Cir. July 18, 1997).

<sup>4</sup> *Id.*

20. Finally, the Commission also has jurisdiction to hear complaints arising out of violations of the Interconnection Agreement, under § 196.02(1), Stats. Since the Interconnection Agreement between Ameritech and Time Warner Telecom was the subject of Commission review and approval, the Commission has jurisdiction to hear complaints arising out of violations of the Interconnection Agreement.

***Ameritech's Provisioning Of Number Portability***

21. When a customer desires to switch its telecommunications services from Ameritech to Time Warner Telecom, both the customer and Time Warner Telecom have experienced extensive problems with the smooth and "transparent" change Ameritech committed to provide.

22. Ameritech has failed to provide LNP in a timely and proper manner in violation of federal and state law and the Interconnection Agreement as follows:

- (a) Ameritech has failed to perform LNP cut overs as scheduled;
- (b) Ameritech changes its process for reviewing LNP orders, without notice to Time Warner Telecom, by requiring additional or different information. Ameritech then rejects Time Warner Telecom's orders for failure to comply with the changes which, in turn, delays LNP cut overs;

(c) Ameritech has failed to respond to the subscription process or provide firm order commitments (FOC) in a timely manner, which delays LNP cut overs;

(d) Ameritech has failed to implement the 10-digit trigger code employed by all other major ILECs and most larger competitive local exchange carriers ("CLECs") to the detriment of Time Warner Telecom, which impedes the LNP cut over process;

(e) Ameritech has unreasonably long time intervals for responding to Time Warner Telecom's LNP orders and performing cut overs;

(f) Ameritech has failed to open the codes necessary for the implementation of LNP;

(g) Ameritech is failing to build the routing and translations into the end offices;

(h) Ameritech has scheduled LNP cut overs for times when it historically has run other programs and/or when staffing is low; and

(i) Ameritech has provided Time Warner Telecom with erroneous information regarding LNP availability.

23. Carriers are implementing LNP through a location routing number ("LRN") architecture. Under an LRN architecture, each customer's telephone number is matched in one of seven data bases with an LRN that

identifies the switch that currently serves that telephone number. Neutral third parties, called local number portability administrators, administer these regional data bases. Ideally, when a customer changes from one LEC to another, the carrier that wins the customer "ports" the customer's telephone number from the former carrier by electronically transmitting or uploading the new LRN to the administrator of the relevant regional data base. This process pairs the customer's original telephone number with the LRN for the switch of the new carrier, allowing the customer to retain the original telephone number.

24. When a customer desires to switch its telecommunications services from Ameritech to Time Warner Telecom, Time Warner Telecom sends an order to Ameritech containing the information requested by Ameritech. Ameritech then sends an FOC back to Time Warner Telecom, indicating that it will meet the LNP cut over due date requested by Time Warner Telecom. Ameritech will not give Time Warner Telecom an FOC, however, until Ameritech determines that it has received a "clean" order from Time Warner Telecom. Often the order is rejected due to changes in the information required by Ameritech which have not been communicated to Time Warner Telecom in advance, and Time Warner Telecom is given no opportunity to provide the additional requested information in time to avoid rejection of the order. A rejection of the order, of course, delays the LNP cut over.

25. Ameritech also has rejected orders due to minor problems with the information provided by Time Warner Telecom. On some occasions, Ameritech has rejected the same order from Time Warner Telecom multiple times and for different reasons. The stated reasons for rejection of orders have been inconsistent and/or unreasonable. For example, if Time Warner Telecom provides an address which spells out the word "street" when the Street Address Guide abbreviates the word as "St.," Ameritech will reject the order. Similarly, the orders have been rejected because the dsg field for disconnects was not completed. Ameritech also may reject an order due to minor problems with the information provided by Time Warner Telecom, even if that information was taken directly from Ameritech's Customer Service Record.

26. Ameritech also has failed to respond to the subscription process in a timely manner, which results in relevant information not being inputted into Ameritech's system, the LNP cut over not occurring and, ultimately, the Time Warner Telecom customer not receiving telephone service.

27. Ameritech also has failed to implement the 10-digit trigger code employed by all other major ILECs and most larger CLECs. Ameritech has supported the use of LRN number portability architecture to implement service provider portability. LRN depends upon Intelligent Network ("IN") or Advanced Intelligent Network ("AIN") capabilities, using a 10-digit number to identify a



switch that has ported numbers. Part of this 10-digit number contains the translation or code that serves as a network address.

28. Instead of using this 10-digit number, Ameritech uses a 7-digit number. Ameritech is the only major ILEC in the country using the 7-digit number instead of the 10-digit number with the LRN model. As a result of the elimination of three key numbers, Ameritech removes the translation for the query and, instead, implements its own translation which permits Ameritech to remain in control of the porting number instead of vesting control with the CLEC. Problems in implementing this translation have resulted in extending time frames to port numbers.

29. Without the 10-digit trigger code which supplies the translation, the translation necessary for cut overs must be coordinated manually--to the minute--between Ameritech and Time Warner Telecom. If problems occur during the coordination between Time Warner Telecom and Ameritech, the customer will be without service.

30. Ameritech's ability to use the 10-digit trigger code merely requires a software upgrade. All other major ILECs and the majority of large CLECs, including Time Warner Telecom, have upgraded their software and are using the 10-digit trigger code. Ameritech has failed to upgrade its software to meet this industry standard to the detriment of Time Warner Telecom.

31. Ameritech also has unreasonably long time intervals for effectuating LNP cut overs. Ameritech's LNP processing intervals are uncertain, and have averaged from 1 week to 2 weeks. The suggested industry intervals for cut overs are 3 business days for an end office previously opened to LNP and 5 business days for end offices that have not been opened to LNP. Firm guidelines for provisioning LNP, with specified time intervals, are necessary to ensure no impairment of quality, reliability, or convenience.

32. Ameritech also has failed to open codes necessary for the implementation of LNP. Ameritech often rejects Time Warner Telecom's LNP orders because a necessary code is not open. This is an unreasonable basis for rejecting an order given the fact that Ameritech is responsible for ensuring that the necessary codes are open.

33. Instead of opening all codes that are portable for NPA-NXX's at the time the switch is made LNP capable and NPA-NXX is designated, Ameritech will only open certain codes. Time Warner Telecom has opened all its codes, but Ameritech has advised Time Warner Telecom that it will not have all the necessary codes open until February of 1999. This position violates Ameritech's obligation under the First Report and Order to have LNP implemented in Milwaukee by June 30, 1998, and its obligation under the Interconnection Agreement to convert INP to LNP by December 31, 1998.

Ameritech has a duty to promptly open codes in all its NXXs which are in the scheduled LNP ready markets.

34. Ameritech is not performing the routing and translations at the end offices associated with number porting. A customer may be ported, but the routing and translations are not built into all the end offices for the number porting. Consequently, when a call comes through to the end office, the porting takes place at the tandem level -- and all the traffic hits Time Warner Telecom's tandem trunks -- instead of the end office trunks as intended. In other words, Time Warner Telecom's tandem trunks are taking all the LNP traffic instead of the end office trunks taking the traffic. LNP customers currently are not included on the forecasts because this traffic was not planned. This process adversely affects Time Warner Telecom's network and will do so to a greater degree in the future as Time Warner Telecom moves from INP to LNP and increases its use of LNP. Forecasting and trunking to handle customer LNP traffic will also become an issue.

35. Once a cut over occurs and LNP is in place, the stability of LNP has been an issue. For example, problems with E911 may occur if Ameritech fails to unlock the data record for update in a timely manner and Time Warner Telecom is not able to migrate the number. Similarly, if the translation used by

Ameritech to perform the cut over is not accurate, the customer may be without telephone service.

36. The problems with LNP defeat Time Warner Telecom's ability to convert customers from INP to LNP. Pursuant to the First Report and Order, Ameritech was required to implement LNP in Milwaukee by June 30, 1998. If LNP is not working properly, then the parties' obligation under the Interconnection Agreement to convert from INP to LNP by December 31, 1998, is jeopardized.

37. Time Warner Telecom has customers that need to migrate from INP to LNP. Time Warner Telecom has taken every measure to prepare for LNP, and its switches and network are LNP capable. Given the serious and substantial difficulties of implementing LNP with Ameritech, Time Warner Telecom is reluctant to place its relationship with its customers in jeopardy to achieve LNP unless these issues are remedied.

38. Despite its substantial problems in complying with the 10-digit trigger, its failure to upgrade its software, and its refusal to open all NPA-NXX codes for LNP, Ameritech has notified CLECs in Wisconsin, including Time Warner Telecom, that it will charge CLECs INP retail rates when interim arrangements are not migrated to Service Provider Number Portability within 120 days from the last day which the FCC has mandated Service Provider Number Portability in a particular Metropolitan Statistical Area, or by October 30, 1998.

Ameritech cannot unilaterally institute a penalty -- and thereby benefit monetarily -- by charging higher rates for failure to migrate from INP to LNP when Ameritech is the cause for making such migration impossible or unreliable. Moreover, Ameritech cannot unilaterally decide that the failure to migrate from INP to LNP by October 30, 1998, will result in higher rates. Such an arbitrary date is contrary to Section 15.2.5 of the Interconnection Agreement which provides that the parties shall migrate from INP to LNP by December 31, 1998.

***Ameritech's Conduct Is Anticompetitive And Violates  
Federal And State Law, And The Interconnection Agreement***

39. The ability of customers to retain their telephone numbers -- through LNP -- when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they choose to purchase. Number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to prices and service changes without changing their telephone numbers. (First Report and Order, ¶ 30).

40. Ameritech's actions are unjust, unreasonable, discriminatory and constitute an anticompetitive and unlawful abuse of its monopoly power against a local competitor and is contrary to the public interest. Time Warner Telecom must rely upon Ameritech to process orders for porting numbers and

must work with Ameritech to cut over the customer's service. Ameritech's conduct in failing to provide LNP in a prompt, effective, and efficient manner is unjust, unreasonably discriminatory, anticompetitive, contrary to law, and results in the lack of parity among telecommunications providers.

41. The legislature has established the promotion of competition as one of the most important policies in Wisconsin. Specifically, § 133.01 provides:

The intent of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory business practices which destroy or hamper competition. It is the intent of the legislature that this chapter be interpreted in a manner which gives the most liberal construction to achieve the aim of competition. It is the intent of the legislature to make competition the fundamental economic policy of this state and, to that end, state regulatory agencies shall regard the public interest as requiring the preservation and promotion of the maximum level of competition in any regulated industry consistent with the other public interest goals established by the legislature.

42. Ameritech's failure to provide timely and proper LNP is anticompetitive and transforms a lack of parity into a benefit for Ameritech by helping to perpetuate its monopoly status.

43. Ameritech's behavior adversely affects customers' willingness to switch carriers. Large business customers will not change carriers if they are required to change telephone numbers.

44. Ameritech's procedures for handling and processing orders and effectuating cut overs of customers often results in Time Warner Telecom missing deadlines imposed by customers, which in turn damages Time Warner Telecom's reputation and its customers' perception of, and confidence in, the quality of service being provided by Time Warner Telecom.

45. Ameritech's conduct also harms Time Warner Telecom in terms of the wasted time Time Warner Telecom personnel must spend dealing with Ameritech to remedy the problems, prevent the problems from reoccurring in the future, and mending customer relations.

46. Ameritech's behavior also is contrary to the public interest because it defeats the purpose of Act which is to promote competition.

47. Ameritech's failure to properly provision LNP is not only anticompetitive, but it hampers innovation, which is one of the goals of competition. Without competition, innovation is less likely to occur.

48. Ameritech's failure to properly and timely provision number portability harms competition by undermining the development of facilities based competition which is dependent upon an efficient and effective LNP solution. LNP is essential to facilities-based local competition and Ameritech's behavior has a disparate impact on the ability of facilities-based competitors to provide reliable

service on a competitive basis. Only facilities-based competition will make possible infrastructure expansion.

49. Ameritech's procedures for handling and processing orders for number porting and transferring service from one carrier to another--which may leave customers without telephone service for hours to days at a time--also endangers public safety, leaving customers without access to emergency systems such as 911.

50. The LNP problems listed above, and similar problems not specifically enumerated, create a reluctance among Time Warner Telecom's existing customers to migrate to LNP, thereby jeopardizing the feasibility of migrating customers from RCF or DID to permanent portability as soon as practically possible as required by the Interconnection Agreement.

51. The inability of customers to retain their telephone numbers when changing local service providers, whether actual or perceived, hampers the development of local competition.

52. By the acts and conduct described above, Ameritech has violated the Telecommunications Act of 1996 and the FCC mandate that LNP be available as of June 30, 1998.

53. By the acts and conduct described above, Ameritech has violated its duty to provide reasonably adequate service under § 196.03(1). Section 196.03(6) provides that "[i]n determining a reasonably adequate



telecommunications service . . . , the Commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:

- (a) Promotion and preservation of competition consistent with Chapter 133 and § 196.219.
- (b) Promotion of consumer choice.
- (c) Impact on the quality of life for the public, including privacy considerations.
- (d) Promotion of universal service.
- (e) Promotion of economic development, including telecommunications infrastructure deployment.
- (f) Promotion of efficiency and productivity.
- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.”

All of these factors are negatively affected by Ameritech’s failure to properly and timely provision LNP and, consequently, compel a determination that Ameritech has breached its duty to provide reasonably adequate service.

54. By the acts and conduct described above, Ameritech has violated §§ 196.219, 196.26, and 196.28, Stats., by subjecting Time Warner Telecom to unreasonable, inadequate, unjust, and discriminatory service. Any

inadequacies in the provisioning of LNP result in a lack of parity. Because INP or LNP only become issues when a customer chooses to change carriers, a bias is created against facilities-based carriers which can be neutralized only by holding Ameritech to the required duty of care in provisioning LNP. The LNP interface requires perfection or near perfection because inherently there is no parity for this service.

55. By the acts and conduct described above, Ameritech has engaged in unjust, unreasonable, discriminatory and anticompetitive behavior; violated public policy and the public interest; and unlawfully abused its monopoly power against a local competitor. Ameritech's actions are manifestly unfair by making it difficult for Time Warner Telecom either to retain existing customers or to sign up new customers because long-term number portability cannot be accomplished in a timely manner without inconvenience to the customer.

56. Ameritech's unlawful actions inhibit the promotion and preservation of competition, thwart consumer choice, adversely affect the public safety by threatening the stability of E911 and access to emergency providers, hinder the promotion of economic development, including telecommunication-infrastructure deployment, and limit the efficiency and productivity of telecommunication providers.

57. Time Warner Telecom seeks a determination that Ameritech's behavior is unjust, unreasonable, discriminatory, anticompetitive, and contrary to

federal and state law, and is a breach of the Interconnection Agreement. Time Warner Telecom further seeks an immediate order directing Ameritech to timely and properly provision LNP, including meeting the agreed upon due dates. Time Warner Telecom also requests the Commission to find that Ameritech acted wrongfully under the Interconnection Agreement and direct Ameritech to cease all such anticompetitive actions in the future.

### **PRAYER FOR RELIEF**

For the foregoing reasons, Time Warner Telecom requests that the Commission do the following:

1. Summarily resolve this dispute and promptly issue an order:

(a) Finding that Ameritech has breached the

Interconnection Agreement between the parties; violated the Telecommunications Act of 1996 and its implementing rules; violated §§ 196.03, 196.219, 192.26, and 196.28; engaged in unjust, unreasonable, discriminatory and anticompetitive behavior; endangered the public safety; violated public policy and the public interest; and unlawfully abused its monopoly power against a local competitor, and

(b) Providing that:

(i) Ameritech is required under the Act to implement LNP without compromising the integrity and reliability of the service to the end user;

(ii) Ameritech is required to provide end users of Time Warner Telecom with the same level of reliability and convenience in transferring service as it provides to its own customers;

(iii) Ameritech is to timely and properly provision LNP, including meeting the agreed upon due dates;

(iv) Ameritech is required to provide weekly, regular reports on LNP, which will be subject to neutral, third party oversight, auditing, and tracking by Commission Staff.

(v) Ameritech is required to upgrade its software so as to enable it to use the 10-digit trigger code;

(vi) Ameritech is required to develop, with the oversight of the Commission's Staff, requirements for processing orders for porting numbers and implementing cut overs, including specific intervals for effectuating cut overs;

(vii) Ameritech is required to perform actual LNP cut overs while Commission Staff is on-site monitoring performance;

(viii) Ameritech is to promptly open codes in all its NXXs which are in the scheduled LNP ready markets;

(ix) Ameritech is to provide a dedicated resource to be available to receive and promptly address Time Warner Telecom's concerns;

(x) Ameritech is to cease all such anticompetitive actions in the future;

(xi) Ameritech is to indemnify Time Warner Telecom in an amount equal to all customer credits paid or customer charges waived by Time Warner Telecom due to Ameritech's failure to properly provision LNP;

(xii) Ameritech is to refund to Time Warner Telecom any charges paid to Ameritech for LNP service that was inadequate under Wisconsin law; and,

(xiii) Ameritech is prohibited from charging Time Warner Telecom INP retail rates when LNP arrangements are not available or workable.

2. In the absence of a summary resolution in its favor, Time Warner Telecom requests a hearing to resolve this dispute.

3. That the Commission impose such sanctions as it deems appropriate to deter Ameritech from pursuing similar action, including withdrawal

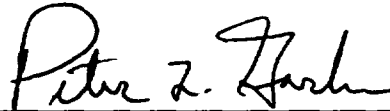
of the benefits as a price regulated telecommunications utility and referral to the Wisconsin Department of Justice.

4. That the Commission commence a proceeding to investigate the proposed merger between Ameritech and SBC Communications, Inc., since the conduct of Ameritech complained of will only worsen if the proposed merger occurs.

5. That the Commission award Time Warner Telecom its reasonable attorneys' fees and costs incurred in prosecuting this Complaint.

6. For such other and further relief as the Commission deems appropriate.

Dated this 13th day of October, 1998.



Marsha Rockey Schermer  
Vice President, Regulatory  
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15.2.1 A Customer of Party A elects to become a Customer of Party B. The Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Exchange Service(s) it shall now receive from Party B. Upon documentation agreed upon by the Parties and an associated service order assigning the number to Party B, Party A shall implement an arrangement whereby all calls to the original telephone numbers(s) shall be forwarded on a multiple-path basis to a new telephone number(s) designated by Party B. Party A shall route the forwarded traffic to Party B over the appropriate trunks as if the call was a call which had originated on Party A's network.

15.2.2 Party B shall become the Customer of record for the original Party A's telephone number(s) subject to the RCF or DID arrangements. Party A shall provide Party B a billing statement for all collect and billed-to 3rd-number calls associated with those numbers, with sub-account detail by retained number. Such billing statement shall be delivered in a mutually agreed format via either paper, Electronic File Transfer, daily magnetic tape or monthly magnetic tape. Party A shall provide to Party B the Electronic Message Record ("EMR") detailed records associated with the calls reflected on the billing statement.

15.2.3 Party A may cancel line-based calling cards and shall, as directed by Party B, update its Line Information Database ("LIDB") listings for retained numbers subject to RCF or DID. Ameritech will include billing number information associated with numbers used for INP arrangements in its LIDB and will store and administer such data in the same manner as Ameritech's data for its Customers. Ameritech shall provide responses to on-line queries to the stored information for the purpose of calling card validation, fraud control and billed numbers screening without charge.

15.2.4 If a Customer elects to move its service back to Party A during the continuance of the RCF or DID arrangement, Party B shall notify Party A of the Customer's termination of service with Party B and the Customer's instructions regarding its telephone number(s) within two (2) business days of receiving notification from the Customer. Party A shall reinstate service to the Customer, cancel the RCF or DID arrangement, or redirect the RCF or DID arrangement pursuant to the Customer's instructions at that time.

15.2.5 The Parties shall migrate from RCF or DID to Permanent Number Portability as soon as practically possible but no later than December 31, 1998, without interruption of service (to the degree possible) to their respective Customers.

15.2.6 Ameritech and TWC shall apply RCF arrangements to one another in accordance with the rates, terms and conditions of the Pricing Schedule.

15.3 Procedures for Providing INP through NXX Migration. Where either Party has activated an entire NXX for a single Customer, or activated a substantial portion of an NXX for a single Customer with the remaining numbers in the NXX either reserved for future use or

otherwise unused, if such Customer chooses to receive service from the other Party, the first Party shall cooperate with the second party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer shall be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead-times for movements of NXXs from one switch to another.

#### 15.4 Procedures for Providing INP through Direct Inward Dial Trunks.

15.4.1 DID service provides trunk side access to End Office Switches for direct inward dialing to the other Party's premises equipment from the telecommunications network to lines associated with the other Party's switching equipment and must be provided on all trunks in a group arranged for inward service. A INP-DID trunk termination, charge (subject to Section 15.4.2) applies for each trunk voice grade equivalent. In addition, direct facilities are required from the end office where a ported number resides to the End Office serving the ported Customer. Transport mileage will be calculated as the airline distance between the End Office where the number is ported and the POI using the V&H coordinate method. INP-DID must be established with a minimum configuration of two channels and one unassigned telephone number per switch, per arrangement for control purposes. Transport facilities arranged for INP-DID may not be mixed with any other type of trunk group, with no outgoing calls placed over said facilities. INP-DID will be provided only where such facilities are available and where the switching equipment of the ordering Party is properly equipped. Where INP-DID service is required from more than one Wire Center or from separate trunk groups within the same Wire Center, such service provided from each Wire Center or each trunk group within the same Wire Center shall be considered a separate service.

15.4.2 The Parties hereby agree to negotiate in good faith for a period of thirty (30) days from the effective date of this Agreement with respect to the recurring and non-recurring charges, if any, for INP through DID. If the Parties are unable to agree upon the applicable charges, the issue shall be resolved in accordance with the process set forth in Article XXXIV. Nothing in this Section 15.4.2. shall preclude a Party from exercising any discovery rights it may have under any Commission proceeding.

15.5 Ameritech will provision RCF to TWC for its new Customers within two (2) business days of receipt of a valid service order that requests five (5) or less ported numbers provisioned through RCF that does not include the associated provisioning of unbundled loops from Ameritech. Ported numbers using DID will require three (3) business days to provision without an associated unbundled loop. Provision of orders for more than five (5) ported numbers (whether provided through RCF or DID) shall be as mutually agreed by the Parties. Ameritech agrees that upon receiving a service order from TWC (in the form and manner agreed to by the Committee) for any Customer of Ameritech who wishes to disconnect its service and receive TWC's service, it shall complete the disconnect and provision RCF or DID, if applicable, within a time frame that shall allow TWC to meet its service interval for new



Customers. Whenever possible, disconnects shall be coordinated between the Parties to avoid breaks in service to the Customer.

15.6 Disconnection of Customers. Subject to the rules and regulations of the Commission, Ameritech shall accept any requests from TWC to disconnect the service of an existing Ameritech Customer, except for Ameritech Public and Semipublic telephone service, subject to effective contracts with location providers. Ameritech shall not require Customer confirmation prior to disconnecting the Customer's service. Ameritech shall accept a request directly from a Customer for conversion of the Customer's service from a TWC to Ameritech or shall accept a request from another NEC for conversion of the INP service associated with an Customer's service charge from TWC to the NEC. Ameritech shall notify TWC that such a request has been processed. This Section 15.6 shall be subject to Section 258(a) and (b) of the Act which prohibits illegal changes of carrier selections and assesses liability for such changes, and any change of service verification procedures which may be promulgated by the FCC.

15.7 Non-Published Numbers. Subject to any applicable confidentiality requirements imposed by law regarding non-published numbers, the Parties shall reciprocally provide their respective numbers and contact names for their non-published bureaus so that each Party's operators shall have the capability to contact the other in order to request that a Party's operator notify that Party's Customer with a non-published number of an urgent call or emergency at the request of a user of the other Party.

15.8 Performance, Forecast, Planning And Standards Committee. The Parties performance and administration of this Article XV shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XVI

### DIALING PARITY -- SECTIONS 251(b)(3) and 271(e)(2).

The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act, except as may be limited by Section 271(e)(2).

## ARTICLE XVII

### ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4).

Each Party shall provide the other Party access to the poles, ducts, rights-of-way and conduits it owns or controls on terms, conditions and prices comparable to those offered to any other entity pursuant to each Party's applicable tariffs and/or standard agreements and in accordance with Section 224 of the Act.

17.1 Performance, Forecast, Planning And Standards Committee. The Parties' performance and administration of this Article XVII shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XVIII

### REFERRAL ANNOUNCEMENT

*The Commission's "Order on Negotiated Interconnection Agreement" issued November 12, 1996, in Cause No. 40572-INT-02, approving this agreement, permits the negotiating parties to file additional information for the Commission's review, consideration and approval to remedy a deficiency noted in that Order with respect to this section.*

## ARTICLE XIX

### OTHER SERVICES - SECTION 271(c)(2)(B)(viii).

TWC and Ameritech provide other services to each other as required under the Act pursuant to the Listing and Directory Services Agreement between Ameritech Advertising Services and Time Warner Communications of Indiana, L.P. dated as of the Execution Date.

## ARTICLE XX

### RESPONSIBILITIES OF THE PARTIES

20.1 At all times during the term of this Agreement or any extension, the Parties agree to use their best efforts to comply with all provisions herein in a fair and nondiscriminatory manner.

20.2 The Parties agree to exchange such reports and/or data as required under this Agreement to facilitate the proper billing of traffic. Upon thirty (30) days' written notice, any Party may request an audit of the usage reports and any such audit shall be accomplished during normal business hours at the office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. No Party shall have access to the data of the Party subject to the audit, but shall rely upon summary results provided by the independent auditor. Each Party shall maintain reports, records and data relevant to the billing of any Services that are the subject matter of this Agreement for a period not less than twelve (12) months after creation thereof. A request for an audit must be received within one (1) year of receipt of the PLU factor and usage reports provided by the Party to be audited.

20.3 TWC shall provide Ameritech with monthly service projections including, without limitation, busy hour usage for Ameritech's access capacity. Ameritech shall manage its network in order to accommodate TWC's projected traffic at the required grade of service. The Parties shall review engineering requirements on a semi-annual basis and establish annual forecasts for trunk and facilities utilization provided under this Agreement. Trunk growth shall be implemented as dictated by engineering requirements.

20.4 The Parties shall share responsibility for all Control Office functions for Local Interconnection Trunks and Trunk Groups, and all Parties shall share the overall coordination, installation, and maintenance responsibilities for such trunks and trunk groups.

20.5 TWC shall be responsible for all Control Office functions for the Meet-Point Trunking, Trunks and Trunk Groups, and shall be responsible for the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

20.6 Each Party shall:

- a. Provide trained personnel with adequate and compatible test equipment to work with the other Party's technicians;
- b. Notify the other Party when there is any change affecting the service requested, including the due date;

- c. Coordinate and schedule testing activities of its own personnel, and others as applicable, to ensure its Interconnection trunks/trunk groups are installed per the Interconnection order, meet agreed-upon acceptance test requirements, and are placed in service by the due date;
- d. Perform sectionalization to determine if a trouble is located in its facility or its portion of the Interconnection trunks prior to referring the trouble to the other Party;
- e. Advise the other Party's Control Office if there is an equipment failure which may affect the Interconnection trunks;
- f. Provide the other Party with a trouble reporting number that is readily accessible and available twenty-four (24) hours per day seven (7) days a week;
- g. Provide to the other Party test-line numbers and access to test lines.

20.7 Bilateral Agreement. The Parties, through the Committee, shall jointly develop and implement a bilateral agreement regarding technical and operational interfaces and procedures not covered by this Agreement ("Bilateral Agreement"). The Parties shall use their best efforts to finalize such agreement within ninety (90) days of the Execution Date of this Agreement.

20.8 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

20.9 Trouble Reports. The Parties shall cooperatively plan and implement coordinated repair procedures for the Meet-Point Trunks and Local Interconnection Trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

20.10 The Parties shall provide their respective billing contact numbers to one another.

20.11 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law, general liability insurance and worker's compensation insurance. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).

20.12 Performance, Forecast, Planning And Standards Committee. The Parties performance and administration of this Article XX shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XXI

### TRUNK FORECASTING

21.1 The Parties shall work towards the development of joint forecasting responsibilities for the traffic utilization over trunk groups. Intercompany forecast information must be provided by the Parties to each other semi-annually or more frequently as the Committee may determine. The semi-annual forecasts shall include, among other things:

- a. Yearly forecasted trunk quantities including, without limitation, measurements that reflect actual tandem Local Interconnection Trunks and Meet-Point Trunks and tandem-subtending Local Interconnection End Office equivalent trunk requirements for a minimum of three (current and plus-1 and plus-2) years; provided that the current year forecast shall show a monthly forecast;
- b. The use of Common Language Location Identifier (CLLI-MSG), which is described in Bellcore documents BR 795-100-100 and BR 795-400-100; and
- c. A description of major network projects anticipated for the following six (6) months.

21.2 Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

21.3 Performance, Forecast, Planning And Standards Committee. The Parties performance and administration of this Article XXI shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XXII

### GRADE OF SERVICE

A blocking standard of one-half of one percent (.005) during the average busy hour for final trunk groups between a TWC End office and Ameritech access Tandem carrying Exchange Access traffic shall be maintained. All other final trunk groups are to be engineered with a blocking standard of one percent (.01).

## ARTICLE XXIII

### TRUNK SERVICING

23.1 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Access Service Request ("ASR").

23.2 The Parties shall jointly manage the capacity of Local Interconnection Trunk Groups. Either Party may send another an ASR to initiate changes to the Local Interconnection Trunk Groups that the ordering Party desires based on the ordering Party's capacity assessment. The receiving Party shall issue a Firm Order Commitment ("FOC") and a Design Layout Record ("DLR") to the ordering Party within five (5) business days after receipt of the ASR.

23.3 Orders that comprise a major project (i.e., new switch deployment) shall be submitted in a timely fashion, and their implementation shall be jointly planned and coordinated.

23.4 Service requested in an ASR shall be provided within twenty (20) business days of receipt of such ASR.

23.5 If a Party requires trunk servicing within shorter time intervals than those provided for in this Article XXIII due to a *bona fide* Customer demand and such trunk servicing was not forecasted by a Party pursuant to Article XXI, such Party may designate its ASR as an "Expedite" and the other Party shall issue its FOC and DLR and use its best efforts to install service as soon as reasonably possible.

23.6 TWC shall be responsible for engineering its network on its side of the POI. Ameritech shall be responsible for engineering the POI and its network on its side of the POI.

23.7 Performance, Forecast, Planning And Standards Committee. The Parties performance and administration of this Article XXIII shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XXIV

### NETWORK MANAGEMENT

24.1 Protective Controls. Any Party may use or request protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward or from each other's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed by such Party.

24.2 Expansive Controls. Where the capability exists, originating or terminating traffic rerouting may be implemented by a Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall only be used when the Parties mutually agree.

24.3 Mass Calling. The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, in order to prevent or mitigate the impact of these events on the public switched network.

24.4 Network Harm. Neither Party shall use any service related to or using any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers, causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment.

24.5 Performance, Forecast, Planning And Standards Committee. The Parties performance and administration of this Article XXIV shall conform to the recommendations, findings and conclusions of the Committee.

## ARTICLE XXV

### DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, OR ANY APPLICABLE TARIFF, IF ANY, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER THIS AGREEMENT OR AS CONTEMPLATED BY THIS AGREEMENT. IN THE CASE OF ACCESS TO NETWORK ELEMENTS, THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE XXVI

### CANCELLATION CHARGES

Except as otherwise provided in any applicable tariff or contract referenced herein or as otherwise agreed by the Parties, no cancellation charges shall be imposed upon, or payable by, either Party.

## ARTICLE XXVII

### INDEMNIFICATION

27.1 Except as provided in Section 28.2, each Party (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a third party arising out of the negligence or willful misconduct by such Indemnifying Party, its agents, its Customers, contractors, or others retained by such parties, in connection with its provision of services or functions under this Agreement.

27.2 Each Party ("Indemnified Party") shall be indemnified, defended and held harmless by the other Party ("Indemnifying Party") against any Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving:

(1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers; or

(2) Claims for patent, trademark, copyright infringement or other infringement of intellectual property rights, arising from the Indemnifying Party's acts combining or using the service furnished by the Indemnified Party in connection with facilities or equipment furnished by the Indemnifying Party or its Customers, agents, subcontractors or others retained by such parties.

27.3 Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party arising from the first Party's failure to comply with the Communications Law Enforcement Act of 1994 ("CALEA") and shall at such non-compliant Party's sole cost and expense, modify and replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

27.4 The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any Loss identified in this Article XXVII. The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand for which such Indemnifying Party is or may be responsible and of which the Indemnified Party has knowledge and to cooperate in every reasonable way to facilitate defense or settlement of claims. The Indemnifying Party shall have the exclusive right to control and conduct the defense and settlement of any such actions or claims subject to consultation with the Indemnified Party. The Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.



## ARTICLE XXVIII

### LIMITATION OF LIABILITY.

28.1 Each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the services and facilities provided by the other Party, its agents, subcontractors, or others retained by such parties. No Party shall be liable for any act or omission of another Telecommunications Carrier providing a portion of a service.

28.2 Each Party shall, to the maximum extent permitted by applicable law, provide in its tariffs and contracts with its Customers that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement that in no case shall either Party or any of its agents, contractors or others retained by such parties be liable to any Customer for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages (as defined in Section 28.3). In the event that a Party breaches its obligation under this Section 28.2, the breaching Party shall be liable to the non-breaching Party for any and all Losses resulting from such breach, including, without limitation, indemnification and/or reimbursement for Losses arising from claims from such breaching Party's Customers.

28.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages: provided, that the foregoing shall not limit a Party's obligation under Section 27.1 to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party.

## ARTICLE XXIX

### EFFECTIVENESS; TERM

29.1 The Parties shall file this Agreement with the Commission immediately following its execution in accordance with the Act and, unless rejected by the Commission, this Agreement shall become effective when approved by the Commission (or the FCC if the Commission fails to act) or when deemed approved under the Act.

29.2 The Parties agree to Interconnect their networks pursuant to the terms and conditions of this Agreement in the Territory for a period of two (2) years. In the sole discretion of TWC, TWC may elect to commence the stated two (2) year term of this Agreement on the date on which this Agreement becomes effective pursuant to Section 29.1 or the date of the completion by one of TWC's Customers of the first commercial switched local exchange service call in the Territory. TWC's election regarding the commencement of the term of this Agreement shall be made no later than the date on which such first commercial call is made. If TWC fails to make an election, the two (2) year term of this Agreement shall commence on the date on which such first commercial call is completed.

29.3 Upon delivery of written notice at least one hundred sixty (160) days prior to the expiration of this Agreement, either Party may require negotiations of the rates, terms, and conditions of the Interconnection arrangements to be effective upon such expiration. If the Parties are unable to satisfactorily negotiate such new terms within one hundred thirty five (135) days of such written notice, either Party may petition the Commission or take such other action as may be necessary to establish appropriate Interconnection arrangements. If the Parties are unable to mutually agree on such new terms or the Commission does not issue its order prior to the expiration date of the Agreement, this Agreement shall continue in full force and effect on and after the expiration of the term, subject to the terms and conditions of this Section 29.3 until terminated as provided herein. In the event that the Commission does not issue its order prior to the expiration of the Agreement, the Parties agree that the rates, terms and conditions ultimately ordered by such Commission or negotiated by the Parties shall be effective retroactive to such expiration date. Until a revised or subsequent Interconnection arrangement becomes effective, the Parties shall continue to perform in accordance with the terms of this Agreement.

## ARTICLE XXX

### FORCE MAJEURE

No Party shall be responsible for delays or failures in performance of any part of this Agreement resulting from acts or occurrences beyond the reasonable control of such Party, including, without limitation, acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any government or legal body; embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event"); or delays caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day or hour-for-hour, as applicable, basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day or hour-for-hour, as applicable, basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of non-performance and the Parties shall proceed to perform with dispatch once the causes are removed or cease.

## ARTICLE XXXI

### GOVERNING LAW AND REGULATORY APPROVAL

31.1 This Agreement shall be governed by the laws of the State of Indiana, without giving effect to the principles of conflicts of law thereof and federal law, as applicable, including the Act.

31.2 The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification. If the Commission, the FCC or a court of competent jurisdiction rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion: provided that such rejected portion shall not affect the validity of the remainder of this Agreement. The Parties acknowledge that nothing in this Agreement shall limit a Party's ability, independent of such Party's agreement to support and participate in the approval of this Agreement, to assert public issues relating to the Act.

## ARTICLE XXXII

### DEFAULT

If either Party believes the other Party is in breach of this Agreement or in violation of law, it shall give the other Party written notice of such breach or violation ten (10) days prior to commencing the dispute resolution procedures set forth in Article XXXIV.

## ARTICLE XXXIII

### NONDISCLOSURE

33.1 All information, including, but not limited to, summary results of audits, specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished or made available or otherwise disclosed by one Party to (a "Disclosing Party") the other Party or any of such other Party's employees, contractors, agents or Affiliates (its "Representatives" and with a Party, a "Receiving Party") dealing with Customer specific, facility specific, or usage specific information, other than Customer information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated orally and declared to the Receiving Party at the time of delivery, or by written notice given to the Receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the Disclosing Party.

33.2 Upon request by the Disclosing Party, the Receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the Receiving Party may retain one copy for archival purposes and if applicable, as necessary to perform its obligations under this Agreement.

33.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only for performing the covenants contained in this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

33.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information which:

- a. was at the time of receipt already known to the Receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the Disclosing Party; or
- b. is, or becomes, publicly known through no wrongful act of the Receiving Party; or
- c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; or
- d. is independently developed by an employee, agent, or contractor of the Receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e. is approved for release by written authorization of the Disclosing Party; or
- f. is required to be made public by the Receiving Party pursuant to applicable law or regulation provided that the Receiving Party shall give sufficient notice of the requirement to the Disclosing Party to enable the Disclosing Party to seek protective orders.

33.5 Notwithstanding any other provision of this Agreement, to the contrary, the Proprietary Information provisions of this Agreement shall apply to all information furnished by any Party to the another in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

#### ARTICLE XXXIV

#### DISPUTE RESOLUTION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements the Parties may have in connection with this Agreement, such disputes shall be resolved in accordance with this Article XXXIV: The Parties shall first discuss the dispute and seek resolution prior to taking any action before any court or regulator, or before authorizing any public statement about or authorizing disclosure of the nature of the dispute to any third party. Such conference shall occur at least at the Vice President level for each Party. In the case of Ameritech, its Vice President--Sales and Marketing, Network Providers, Ameritech Information Industry Services or equivalent officer, shall participate in the meeting, and TWC's, Vice President for Business Services or equivalent officer, shall participate. The designated representatives shall meet as often as they reasonably

deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to a dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, then thereafter, the Parties shall attempt in good faith to address any default or resolve any dispute according to the rules, guidelines and regulations of the Commission. In the event there are no such dispute resolution rules, guidelines or regulations of the Commission, the Parties shall submit such dispute to the procedures agreed to by the Committee.

## ARTICLE XXXV

### MISCELLANEOUS PROVISIONS

#### 35.1 Authorization.

35.1.1 Ameritech Information Industry Services is a division of Ameritech Services, Inc., a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Ameritech Information Industry Services has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder on behalf of Ameritech Indiana.

35.1.2 TWC is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

35.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

35.3 Performance, Forecast, Planning And Standards Committee. The Parties hereby agree to the formation of a Performance, Forecast, Planning and Standards Committee which shall be composed of representatives of both Parties for the purpose of: developing and implementing policies and procedures to promote effective and efficient performance for the benefit of each Party's Customers and each other; promoting reliable forecasting of facility and capital needs associated with the performance of this Agreement; coordinating planning of new, expanded, modified or altered network features, functions and capabilities; and, developing appropriate standards by which to evaluate the quality and timeliness of performance. Within thirty (30) days of the execution of this Agreement, each Party shall designate, in writing, no more than four (4) persons to be permanent members of this Committee provided that either Party may include, in Committee meetings or Committee activities, such technical specialists or other persons as may be reasonably required to address a specific task, matter or subject. Each Party's permanent members of the Committee shall have the authority to make commitments and take such other action as may be necessary to satisfy the objectives of this Agreement. Within

sixty (60) days from the execution of this Agreement, the Parties shall have conducted the first Committee meeting and identified a schedule and procedures for the purpose of satisfying the objectives of this Section 35.3. Such procedures shall include the process by which issues shall be resolved by the Committee. The Parties understand and agree that it is not possible, as of the date this Agreement is executed, to list or define all the needs, resources and capabilities that may be required to efficiently and effectively accomplish the objectives of this Agreement. It is the specific intent of the Parties that the Committee created by this Section 35.3 shall provide the flexibility that shall be required to allow this Agreement to dynamically adapt the relationship of the Parties as circumstances warrant or as otherwise required. Determinations by the Committee may be incorporated in the Bilateral Agreement or this Agreement according to Section 35.15 but shall, nonetheless, be in writing and provided to the persons specified in Section to receive notices.

35.4 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

35.5 Disputed Amounts.

- a. If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within sixty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.
- b. If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated

representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

- c. If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after referral of the dispute pursuant to Article XXXIV of this Agreement, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.
- d. The Parties agree that all negotiations pursuant to this Section 35.5 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.
- e. Any amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

35.6 No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

35.7 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

35.8 Most Favored Nation -- Section 252(i).

- a. If Ameritech enters into an agreement (the "Other Agreement") approved by the Commission pursuant to Section 252 (e)(1) of the Act or filed a tariff or is subject to an order of the Commission or the FCC which provides for the provision of arrangements covered in this Agreement within the State of Indiana to another requesting Telecommunications Carrier, including itself or its Affiliate, Ameritech shall make available to TWC such arrangements upon the same rates, terms and conditions as those provided in the Other Agreement or tariff. At its sole option, TWC may avail itself of either (i) the Other



Agreement in its entirety or (ii) the prices, terms and conditions of the Other Agreement that directly relate to any of the following duties as a whole:

- (1) Interconnection - Section 251(c)(2) of the Act (Section 4.0 and 5.0 of this Agreement); or
  - (2) Exchange Access - Section 251(c)(2) of the Act (Section 6.0 of this Agreement); or
  - (3) Unbundled Access - Section 251(c)(3) of the Act (Section 9.0 of this Agreement); or
  - (4) Resale - Section 251(c)(4) of the Act (Section 10.0 of this Agreement); or
  - (5) Collocation - Section 251(c)(6) of the Act (Section 12.0 of this Agreement); or
  - (6) Number Portability - Section 251(b)(2) of the Act (Section 13.0 of this Agreement); or
  - (7) Access to Rights of Way - Section 251(b)(4) of the Act (Section 15.0 of this Agreement); or
  - (8) Service quality standards that apply to any of the duties set forth in subsections (1)-(7) above, or
  - (9) E911 Service - Section 271(c)(2)(B)(vii)(I) of the Act (Section 11.1 of this Agreement); or
  - (10) Directory Listing - Section 271(c)(2)(B)(viii) of the Act; or
  - (11) Directory Assistance Database - Section 271(c)(2)(B)(vii)(II) of the Act (Section 11.2 of this Agreement).
- b. Nothing in this Section 35.8. shall affect any obligations TWC may have under Section 252(i) of the Act or be construed to waive any of Ameritech's rights under Section 252(i).

**35.9 No License.** No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

35.10 Severability. Except as provided in Section 35.8, if any provision of this Agreement, or the application of such provision to any Party or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby; provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

35.11 Performance. The Parties understand and agree that each Party's ability to effectively and efficiently provide local exchange service to their respective Customers shall substantially depend upon each Party's responsiveness to the other Party's requests and each Party's performance of its responsibilities under this Agreement. The Parties understand that performance under this Agreement may be asserted by either Party in any proceeding relating to compliance with the requirements of Section 271 of the Act.

35.12 Independent Contractor. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

35.13 Non-Assignment. Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which shall not be unreasonably withheld; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

35.14 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

35.15 Modification. No variation or modification of this Agreement and no waiver of any of its terms or conditions shall be valid unless it is in writing and signed by the duly authorized officers of the Party or Parties sought to be charged.

35.16 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery

service, (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (d) delivered by telecopy to the following addresses of the Parties:

To TWC:

Time Warner Communications of Indiana, L.P.  
250 East 96th Street  
Indianapolis, Indiana 46240  
Attn: Vice President and General Manager  
Facsimile: 317/587-1314

with a copy to:

Time Warner Communications  
160 Inverness Drive West  
Englewood, CO 80112  
Attn.: Senior Counsel  
Facsimile: 303/799-5591

To Ameritech:

Ameritech Information Industry Services  
350 North Orleans, Floor 3  
Chicago, IL 60654  
Attn.: Vice President - Network Providers  
Facsimile: 312/335-2927

with a copy to:

Ameritech Information Industry Services  
350 North Orleans, Floor 3  
Chicago, IL 60654  
Attn.: Vice President and General Counsel  
Facsimile: 312/595-1504

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy.

35.17 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted

in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

35.18 No Third Party Beneficiaries: Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

35.19 Survival. The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation, Articles XXV, XXVII, XXVIII, and XXXIII; and Sections 35.4, 35.5, 35.7, and 35.9.

35.20 Performance, Forecast, Planning And Standards Committee. The Parties' performance and administration of this Article XXXV shall conform to the recommendations, findings and conclusions of the Committee.

35.21 Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written, except for those agreements that are executed contemporaneously herewith. Except as specifically provided, nothing in this Agreement shall be deemed to affect any access charge arrangement. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TIME WARNER COMMUNICATIONS  
OF INDIANA, L.P.

AMERITECH INFORMATION  
INDUSTRY SERVICES, A DIVISION OF  
AMERITECH SERVICES, INC., ON  
BEHALF OF AMERITECH INDIANA

By: [Signature]  
Printed: W. R. BLUNT  
Title: GENERAL MANAGER

By: [Signature]  
Printed: NEIL E. [unclear]  
Title: PRESIDENT

SCHEDULE 3.0

IMPLEMENTATION SCHEDULE

<u>LATA</u>	Ameritech Interconnection Wire Center <u>(AIWC)</u>	TWC Interconnection Wire Center <u>(TIWC)</u>	Interconnection Activation Date
336	Indianapolis IPLSIN0110T	Indianapolis	To be specified by the Committee

## PRICING SCHEDULE — INDIANA

- I. **Information Services Billing and Collection**  
*The Commission's "Order on Negotiated Interconnection Agreement" issued November 12, 1996, in Cause No. 40572-INT-02, approving this agreement, permits the negotiating parties to file additional information for the Commission's review, consideration and approval to remedy a deficiency noted in that Order with respect to this section.*
- II. **E911**

Automatic Number Identification (ANI), Automatic Location Identification (ALI) and selective routing (SR), charge per Access Lines serviced by the E911 Network: \$.08 per Access Line per month and a one-time nonrecurring charge of \$2,000.00.

Each 1000 Access Lines will include the following number of trunks per trunk group between the Ameritech Central Office and Ameritech Control Offices deemed sufficient to accommodate traffic:

Access		Trunks provided at no additional charge
01-1,500	=	2 Trunks
1,501-7,500	=	3 Trunks
7,501-18,500	=	4 Trunks
18,501-33,500	=	5 Trunks

*The Commission's "Order on Negotiated Interconnection Agreement" issued November 12, 1996, in Cause No. 40572-INT-02, approving this agreement, permits the negotiating parties to file additional information for the Commission's review, consideration and approval to remedy a deficiency noted in that Order with respect to this section as to rates, terms and conditions for additional trunks.*

**Optional Manual Update:** Update of the ALI/DMS databases from paper copies of service order activity furnished by TWC at no additional charge. Ameritech reserves the right to institute a charge for Optional Manual Update service upon sixty days written notice to TWC. In that event, electronic update service shall continue to be available at no charge.

**Address and Routing File** No Charge for one (1) ARF per NPA and quarterly updates for that ARF.

III.   Transiting

Rate = \$0.002 per minute of use

IV.    Number Portability

RCF arrangements from and after January 1, 1998:

Recurring Charges--

Residential:       \$2.00 including one line plus two paths, \$.37 per additional path

Business:         \$3.00 including one line plus twenty paths, \$.25 per additional path

Nonrecurring charges shall be waived for one (1) year from the date that Ameritech first provides RCF for Customers of TWC. if at the end of that one (1) year period. TWC's actual ratio of residential customers to business customers, served by TWC's facilities (and not on Ameritech's local loops), is greater than 2:1 (the "Ratio"). If the Ratio is not greater than 2:1, TWC shall pay nonrecurring charges on all ported numbers ordered by TWC for such one (1) year period. The nonrecurring charges shall be the lowest nonrecurring charges applicable to RCF available to another carrier by Ameritech at the end of such one (1) year period. RCF arrangements for any subsequent period shall be determined by good faith negotiations.

If a TWC resale customer becomes a TWC facilities based customer, the nonrecurring charge will be waived.



V. RECIPROCAL COMPENSATION

- A. Subject to terms and conditions of B below, the Parties shall compensate each other for the transport and termination of Local Traffic at the following rates:

Tandem Rate	End Office Rate
\$ .009 per minute of use	\$ .007 per minute of use

- B. Beginning from the date of TWC's election pursuant to Section 29.2 of this Agreement and each twenty-four month period (or fraction thereof if this Agreement expires or terminates earlier) beginning July 1, 1997 and each twenty-four month period thereafter (or fraction thereof if this Agreement expires or terminates earlier) (each a "Calculation Period"), each Party shall aggregate the actual billing record minutes of use of Local Traffic (excluding Transit Traffic) that has been terminated by the other Party during such Calculation Period at its (i) Tandem Switch(es) ("Tandem Local Traffic") and (ii) End Office Switches ("EO Local Traffic").

If the POI between the Parties is at an Ameritech Tandem Office, the Parties shall reciprocally pay the Tandem Local Traffic Rate. If the POI between the Parties is at an Ameritech End Office, the Parties shall reciprocally pay the End Office Local Traffic Rate: provided, that if the Parties have a bona fide dispute as to whether Local Traffic had terminated at a Party's Tandem Switch or End Office Switch, such traffic shall be deemed to be EO Local Traffic.

Within thirty (30) days after the end of a Calculation Period, each Party shall calculate the total dollar amount of Local Traffic it terminated for the other Party during the Calculation Period (its "Terminated Traffic Amount") which shall be equal to the sum of its EO Local Traffic times \$0.007 plus its Tandem Local Traffic times \$0.009.

The Parties shall then calculate the "Imbalance Amount" which shall be equal to the Terminated Traffic Amount of the Party with the greater Terminated Traffic Amount minus the other Party's Terminated Traffic Amount.

If the Imbalance Amount does not exceed \$80,000, the Party with the greater Terminated Traffic Amount shall not bill the other Party for such

amounts. If, however, the Imbalance Amount exceeds \$80,000, the Party with the smaller Terminated Traffic Amount shall pay to the other Party within 30 days of such determination the entire Imbalance Amount, including the initial \$80,000.

**LISTING AND DIRECTORY SERVICES AGREEMENT  
BETWEEN  
AMERITECH ADVERTISING SERVICES  
AND  
TIME WARNER COMMUNICATIONS OF INDIANA, L.P.**

AGREEMENT made this \_\_ day of July, 1996 between Ameritech Publishing, Inc., doing business as "Ameritech advertising services" ("Publisher"), a Delaware corporation with principal offices at 100 East Big Beaver Road, Troy, Michigan 48083, and Time Warner Communications of Indiana, L.P. ("TWC"), a limited partnership with principal offices at 300 First Stamford Place, Stamford, Connecticut 06902-6732.

WHEREAS, Publisher is in the business of publishing and distributing Directories and other information products and services, and desires to acquire certain data and services from TWC in connection therewith; and

WHEREAS, Publisher is willing to provide certain services to TWC in connection with the Publication and distribution of Directories to Subscribers;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Agreement.

- 1.1 "Agreement" shall mean this agreement between TWC and Publisher;
- 1.2 "Ameritech" shall mean the Ameritech entity that operates as an incumbent LEC in the state in question.
- 1.3 "Directories" shall mean compilations of Subscriber Listings, Listing Updates and other printed or electronic information products.
- 1.4 "Directory Assistance Database" shall mean Ameritech's collection of subscriber information by listing type, including name, address and telephone number.

- 1.5 "Initial Delivery" shall mean the delivery to Subscribers within the geographic scope of Publisher's delivery territory of an appropriate local Directory following Publication and issuance of the Directory by Publisher.
- 1.6 "Listing Update(s)" shall include information with respect to Subscriber necessary for Publisher to Publish Directories under this Agreement, as depicted in Exhibit A and in the form of Exhibit B or such other form and forms as the parties may agree. For Subscribers whose telephone service has changed since the last furnished Listing Update because of new installation, disconnection, change in address, change in name, change in non-listed or non-published status, or other change which may affect the listing of the Subscriber in a Directory, Listing Updates shall also include information necessary in order for Publisher to undertake Initial Delivery and Subsequent Delivery of Directories, including mailing addresses, delivery addresses and quantities of Directories requested by a Subscriber. In the case of Subscribers who have transferred service from another LEC to TWC without change of address, Listing Updates shall also include the Subscriber's former listed telephone number and former LEC, if available. Similarly, in the case of Subscribers who have transferred service from TWC to another LEC, Listing Updates shall also include the Subscriber's referral telephone number and new LEC, if available.
- 1.7 "Local Exchange Carrier" or "LEC" shall mean a certified local exchange carrier including Ameritech.
- 1.8 "Local Exchange Service" shall mean local switched telephone service originated through TWC's telecommunication facilities.
- 1.9 "Subsequent Delivery" shall mean delivery, after Initial Delivery, of appropriate Directories to Subscribers who have changed addresses, installed local service in a Directory coverage area for the first time after annual distribution, or otherwise have a reasonable need for Directories.
- 1.10 "Person" shall mean any individual, association, partnership, corporation or other legally recognized entity.

- 1.11 "Primary Listing" shall mean the single directory listing provided to Subscribers by Publisher under the terms of this Agreement. Each telephone configuration that allows a terminating call to hunt for an available line among a series of lines shall be considered a single Subscriber entitled to a single primary listing.
- 1.12 "Publish" or "Publication" shall mean selling advertising, compiling, composing and producing Directories, promoting use, handling claims, packaging, distribution, transportation, determining product content, design, scoping, pricing and all other matters relating to the manufacture, marketing, sale and distribution of Directories.
- 1.13 "Resale Listing(s)" shall mean a list containing the names, the telephone numbers, addresses and zip codes of Resale Subscribers within the defined geographic area, except to the extent such Resale Subscribers have requested not to be listed in a Directory.
- 1.14 "Resale Local Exchange Service" shall mean local switched telephone service sold by TWC and provided through the telecommunication facilities of the Ameritech LEC.
- 1.15 "Resale Subscribers" shall mean any Person who contracts with TWC or its agents for Resale Local Exchange Service by TWC.
- 1.16 "Subscriber(s)" shall mean any Person who contracts with TWC or its agents for Local Exchange Service by TWC.
- 1.17 "Subscriber Listing(s)" shall mean a list containing the names, the telephone numbers, addresses and zip codes of Subscribers within a defined geographical area, except to the extent such Subscribers have requested not to be listed in a Directory.
- 1.18 "White Pages Directories" shall mean Directories or the portion of co-bound Directories which include a list in alphabetical order by name of the telephone numbers and addresses of telecommunication company subscribers, including the Primary listed numbers of all Ameritech subscribers within the geographic scope of the directories.

- 1.19 "Yellow Pages Directories" shall mean Directories or the portion of co-bound Directories consisting primarily of classified advertising, including display advertising and business listings by appropriate heading classification and including the Primary Listings of Ameritech business subscribers.

## ARTICLE II PROVISION OF LISTING AND LISTING UPDATES

TWC will provide Subscriber Listings and Listing Updates to Publisher on a non-exclusive basis as follows:

- 2.1 *Subscriber Listings.* TWC shall provide its Subscriber Listings to Publisher substantially in form and format as depicted on Exhibits A and B.
- 2.2 *Listing Updates.* As soon as reasonably practicable, and in no event later than two business days of installation, disconnection or other change in service (including change of non-listed or non-published status) affecting the Directory Assistance Database or the Directory listing of a Subscriber, TWC shall provide Listing Updates to Publisher in accordance with Exhibit B or another mutually acceptable format.
- 2.3 *Mechanized Interface.* The parties will cooperate to develop a cost-effective, mutually satisfactory, mechanized or electronic process for the provision of TWC Listing Updates to Publisher.
- 2.4 *Use Restrictions.* Where permitted by law or regulatory authority, Publisher may sell or license the use of Subscriber Listings, Resale Listings or Listing Updates to third parties without the prior written consent of TWC; provided, however, that Publisher shall not
- 2.4.1 disclose non-listed or non-published name and address information to any third party, except as may be necessary to undertake Initial Delivery or Subsequent Delivery of Directories, or to perform other services contemplated under this Agreement;
- 2.4.2 disclose to any third party the identity of a subscriber's or resale subscriber's LEC;

- 2.4.3 sell or license such customer listing information sorted by carrier.
- 2.5 *Resale Listings.* TWC shall provide its Resale Listings for inclusion in White Pages Directories to the Ameritech LEC as part of TWC's purchase of Resale Local Exchange Service in a form and format as may be required by the Ameritech LEC.

### ARTICLE III DIRECTORY PUBLICATION AND LISTING SERVICES

- 3.1 *White Pages Publication.* Publisher shall include Subscriber Listings and Resale Listings in its White Pages Directories under the following terms and conditions:
- 3.1.1 Publisher shall Publish the Primary Listing of Subscribers and Resale Subscribers located within the geographic scope of Publisher's Directories at no charge to TWC, Subscribers or Resale Subscribers. Additional listings, foreign listings and other enhanced residential listings that TWC elects to order from Publisher on behalf of TWC's subscribers will be billed to TWC at the same rates, terms and conditions as Ameritech subscribers.
- 3.1.2 Listings of Subscribers and Resale Subscribers will be interfiled with listings of subscribers of Ameritech and other LECs serving the same geographic area where such listings are included within a Directory.
- 3.1.3 Publisher shall arrange for the Initial Delivery and Subsequent Delivery of an appropriate White Pages Directory to Subscribers and Resale Subscribers on the same terms and conditions as such delivery is made to subscribers of Ameritech.
- 3.1.4 White Pages Directories published under this Article may be delivered, or co-bound with Yellow Pages Directories or other products, including advertising material published or distributed by Publisher.

3.1.6 Upon reasonable request, Publisher shall provide TWC with copies of such listings prior to Publication in such form and format as may be mutually agreed to by the parties so that TWC has a reasonable opportunity to review and correct such listings prior to publication. Both parties shall use their best efforts to ensure the accurate listing of such information.

3.1.7 Publisher must receive all Subscriber Listings and Resale Listings prior to the service order close date for the Directory in which those listings are to appear. Publisher will provide TWC with appropriate service order close dates as promptly as reasonably possible, but not later than thirty (30) days of this information becoming available. In no event shall Publisher establish a service order close date that is less than ninety (90) days from the date Publisher makes such information available to TWC.



- 3.2.2 Listings of Subscribers and Resale Subscribers will be interfiled with listings of subscribers of Ameritech and other LECs serving the same geographic area where such listings are included within a Directory.
- 3.2.3 Publisher will arrange for and make initial Delivery and Subsequent Delivery of appropriate Yellow Pages Directories to Subscribers and Resale Subscribers in the same manner as such delivery is made to subscribers of Ameritech.
- 3.2.4 Yellow Pages Directories published under this Article may be delivered, or co-bound with White Pages Directories or other products, including advertising material published or distributed by Publisher.
- 3.2.5 Upon reasonable request, Publisher shall provide TWC with a report of all listings provided under Paragraph 3.2.1 prior to Publication in such form and format as may be mutually agreed to by the parties. Both parties shall use their best efforts to ensure the accurate listing of such information.
- 3.3 *Other Directories.* Publisher may include, at no charge, Subscriber Listings and Resale Listings in other Directories published by Publisher or its affiliate.
- 3.4 *Provision of Directories for TWC's Internal Use.* Upon request, Publisher will supply to TWC a reasonable number of Directories in which Subscribers are listed for TWC's internal use on the same terms and conditions as Publisher provides such directories to Ameritech.
- 3.5 *Additional Directories.* Publisher will permit Subscribers, and TWC on behalf of such Subscribers or Resale Subscribers, to use its directory fulfillment centers, including the placement of additional directory orders by means of access to 800 calling numbers, if available to Ameritech subscribers, to place orders for additional Directories on the same terms and conditions as such Directories

are made available to subscribers of Ameritech. Upon request, Publisher will provide reasonable quantities of non-local Directories to TWC at Publisher's then current prices applicable to Directory purchases by telecommunications providers.

- 3.7 *Consideration.* Publisher shall include the Primary Listings of Subscribers and Resale Subscribers in its White Pages Directories at no charge. TWC shall pay Publisher a fee of Five Dollars (\$5.00) for each Listing Update which changes a subscriber listing previously submitted by TWC to Publisher, except for Listing Updates which pertain solely to the disconnection of service or other non-listing affecting information. Upon mutual agreement, this charge may be waived by Publisher on an individual case basis. Charges for Subscriber's extra listings shall be billed to TWC. Recurring or non-recurring charges for the provision of extra White Pages Directory listings for Resale Subscribers may be assessed by the Ameritech LEC to TWC in accordance with applicable tariffs or agreements between the Ameritech LEC and TWC. TWC shall pay Publisher a fee for Publication of the information specified in Paragraph 3.1.5 in accordance with the rates set forth on Exhibit C, or at such other rates as the parties may from time to time agree. Upon publication of a Directory under this Agreement, TWC shall pay Publisher an annual fee of \$5.00 per Primary Listing for the services provided in Paragraphs 3.1.3, 3.2.1 and 3.2.3.

Publisher shall provide an itemized invoice to TWC for services performed under this Article and payment shall be due within thirty (30) days after receipt of such invoice. Past due balances will bear interest at the rate of one and one-half percent (1 1/2%) per month.

ARTICLE IV  
DIRECTORY ASSISTANCE DATABASE SERVICES

- 4.1 *Inclusion in Directory Assistance Database.* As soon as reasonably practicable, and in no event later than two business days of receipt, Publisher shall forward all Subscriber Listings and Listing Updates to Ameritech for inclusion in the Ameritech Directory Assistance Database. The terms and conditions under which such information is included in the Directory Assistance Database are set forth in a separate agreement between Ameritech and TWC.
- 4.2 *Accuracy.* Both parties shall use their best efforts to ensure the accurate listing of such information in the Directory Assistance Database.

ARTICLE V  
OTHER TERMS AND CONDITIONS

- 5.1 *Mutual Indemnity.* Except as otherwise provided in this Agreement, each party (the "Indemnitor") shall defend and indemnify the other (the "Indemnitee") from any and all claims, demands, suits or damages (including reasonable attorney fees), whether based on contract or tort, arising out of or in connection with the performance of its obligations under this Agreement, unless caused by the negligence or willful acts of the Indemnitee. In no event shall either party be liable for any incidental, punitive, special, or consequential damages or lost profits incurred or alleged to have been incurred by anyone.
- 5.1.1 It is understood that either party may have tariffs or contracts that limit its liability for any errors or omissions in the performance of the obligations under this Agreement, and to the extent the terms of such tariffs or contracts are enforceable, such terms shall be applicable.
- 5.1.2 The parties shall provide to each other any assistance reasonably required to defend any claim, demand, suit or complaint involving Directories published under this Agreement.

- 5.2 *Subcontracting.* Publisher shall have full power and authority to enter into contracts with third parties to perform the services to be provided by it under this Agreement. Upon notice from Publisher, TWC agrees to cooperate with such third parties to the extent reasonably requested by Publisher. Nothing in this Paragraph shall relieve Publisher of its obligations to TWC under this Agreement, except as expressly agreed in writing by TWC.
- 5.3 *Other Business; No interest Created.* Except as otherwise specifically provided in this Agreement, nothing contained herein shall be deemed to limit or restrict either party in the conduct of its business, nor shall anything in this Agreement be deemed to create any interest in favor of TWC or Publisher in the assets, revenues, earnings or otherwise in the business of the other.
- 5.4 *Use of Name. Marks.* Publisher may use TWC's name and trademark for the limited purpose of publishing Directories in accordance with the terms of this Agreement. Publisher shall notify TWC prior to any such Publication and TWC shall review and approve of the use of its name and trademark in accordance with Paragraph 5.18. Nothing in this Agreement shall obligate Publisher to use TWC's name or trademarks on its Directories, nor shall anything in this Agreement preclude Publisher from using the names or trademarks of any other telecommunications providers in connection with publishing Directories or providing other products or services.
- 5.5 *Notices.* All notices or other communications under this Agreement shall be in writing and shall be deemed to have been given if mailed first class postage prepaid by United States mail, overnight express mail, personal delivery, telegram, telex or facsimile.

**5.5.1 Notices to TWC shall be given to:**

Time Warner Communications of Ohio, L.P.  
160 Inverness Drive West  
Englewood, CO 80112  
Attn: Senior Counsel  
Fax No: (303) 799-5591

**5.5.2 Notices to Publisher shall be given to:**

Ameritech advertising services  
100 E. Big Beaver Road, Suite 1300  
Troy, Michigan 48083  
Attention: Director - Competitive Telecommunications Services  
Fax No: (810) 524-7227

or at such other address as either party may hereafter designate by written notice.

- 5.6 *Binding Effect.*** This Agreement shall be binding on and inure to the benefit of the parties, and their respective successors and assigns.
- 5.7 *Governing Law.*** This Agreement shall be governed by and construed under and in accordance with the laws of the state where the directories are delivered.
- 5.8 *Entire Agreement: Amenaments.*** This Agreement constitutes the entire agreement, and supersedes any prior agreements, between the parties with respect to the subject matter hereof. There are no other understandings, representations or warranties, oral or written, relating to the subject matter. This Agreement may not be amended except by a written instrument executed by both parties.
- 5.9 *Severability.*** If any provision of this Agreement or the application thereof to any Person or circumstance is held to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected, and the Agreement shall be enforced to the greatest extent permitted by law.

- 5.10 *Compliance with Legal and Regulatory Requirements.* In providing services under this Agreement, the parties shall comply with all legal and regulatory requirements relating to the production, Publication, promotion and distribution of Directories and the provision of listings, the Information Pages or other Subscriber information, including, without limitation, any rules, regulations or orders of the Federal Communications Commission, the United States District Court for the District of Columbia and any other local, state or federal regulatory authority with jurisdiction hereof. Each party shall notify the other of any legal or regulatory requirements imposed on such party that may affect the performance of this Agreement.
- 5.11 *Headings.* The headings in this Agreement are for convenience only and are not a part of this Agreement.
- 5.12 *Term and Termination.* This Agreement shall be effective on the execution date hereof and shall apply to all Directories published with a service order close date on or after that date. This Agreement shall terminate five (5) years after such execution date unless earlier terminated or extended as provided in this Agreement.
- 5.12.1 This Agreement shall be automatically renewed from year to year unless either party gives written notice of termination at least six (6) months in advance of the original or any renewal termination date.
- 5.12.2 This Agreement may be terminated by either party in the event the other party materially breaches its obligations under the Agreement, provided, however, that written notice of the breach is provided not less than ninety (90) days prior to termination and the other party fails to cure the breach within sixty (60) days of notice of breach.
- 5.12.3 This Agreement may be terminated by TWC in the event the Master Interconnection Agreement terminates and is not renewed or otherwise superseded by other interconnection arrangements.

- 5.13 *Confidentiality.* The terms of this Agreement shall be kept confidential and shall not be disclosed to any third party, without the prior written consent of the parties, except as may be necessary to perform under or enforce this Agreement, or to comply with the terms of a regulatory requirement, subpoena, or other legal process or order. If either party provides confidential information, the receiving party shall protect the confidential information from disclosure to third parties, with the same degree of care afforded its own confidential and proprietary information, except that neither party shall be required to hold confidential any information which becomes publicly available other than by breach of this Agreement, which is required to be disclosed by a governmental or judicial order, which is required to be disclosed by statute, which is independently developed by the receiving party or which becomes available to the receiving party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement.
- 5.14 *Surviving Obligations.* Obligations of the parties which by their nature are continuing shall survive the expiration or termination of this Agreement.
- 5.15 *Force Majeure.* Neither party shall be held liable for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, inability to secure material or transportation facilities, act or omission of carriers or other similar event beyond its control. Upon occurrence of such an event under this Paragraph, the party whose performance is affected shall give immediate notice to the other party, which shall then have the option of suspending this Agreement for the duration of the event.
- 5.16 *No Third Party Rights.* The provisions of this Agreement are intended solely for the benefit of the parties to this Agreement, and no third-party beneficiary or other rights are created in favor of any other Person or entity.
- 5.17 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original.
- 5.18 *Verification.* Prior to any Publication, Publisher shall, upon request, deliver to TWC pages of such Directory reflecting and describing Publisher's proposed

use of TWC's name and trademark. All such Directory pages shall be subject to TWC's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. If TWC shall fail to approve or disapprove of such Directory pages within five (5) days after delivery to TWC, such pages shall be deemed approved by TWC.

- 5.19 *Assignment.* Neither party may assign or otherwise transfer this Agreement or the rights herein granted without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, each party shall not be required to obtain the consent of the other for an assignment or transfer to any affiliate, any purchaser of all or substantially all of the assets, or any Person with which or into which such party may merge or consolidate.
- 5.20 *Right of Audit.* Each of the parties may reasonably audit the records and operations systems of the other party as they pertain to the obligations to be performed pursuant to this Agreement.
- 5.21 *Publisher's Rights.* Nothing in this Agreement shall restrict Publisher's authority as publisher of the Directories from altering the geographic scope, directory life, headings, content or format of the Directories.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Time Warner Communications of Indiana, L.P. and Ameritech advertising services have caused this Agreement to be duly executed on the date set forth below.

Time Warner Communications of Indiana L.P.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Ameritech Advertising Services

By: William J. Champion III

Its: Vice President

Date: 7-10-96